



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Transcontinental Enterprises, Inc.

File: B-230216

Date: May 27, 1988

DIGEST

Under Office of Management and Budget Circular A-76 appeals procedure where protester has not been allowed to challenge new information submitted by the agency to establish that its in-house estimate is low because costs were mistakenly included in the government estimate, issue should be referred back to the agency for A-76 appeals board review.

DECISION

Transcontinental Enterprises, Inc., protests the determination to retain in-house certain operations at the Washington Navy Yard solicited under invitation for bids (IFB) No. N62477-86-B-1531, issued by the Naval Facilities Engineering Command. This determination was made in accordance with Office of Management and Budget Circular A-76 procedures. The IFB solicited offers for the express purpose of comparing the cost of performing certain transportation and refuse collection services in-house with the cost of awarding a commercial contract for a base period of 7 months plus 3 option years. The cost comparison indicated that the costs associated with Transcontinental's low commercial bid exceeded the Navy's estimate of its in-house costs. The Navy thus determined to retain the function in-house. Transcontinental appealed the results of the cost comparison to a Navy appeals board which, after making adjustments, determined that Transcontinental's cost would be \$86,530 more than the in-house estimate and, thus, affirmed the decision to retain the services in-house. This protest followed on February 12, 1988, alleging various errors in the cost comparison and subsequent appeals board decision which, if corrected, would change the outcome.

We sustain the protest.

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After the protest was filed, the Navy conceded that its in-house estimate was too low because of an error. The \$86,530, by which Transcontinental's bid exceeded the in-house estimate was reduced to \$31,753, to correct the error. After an informal conference with representatives of the Navy, Transcontinental and our Office on March 23, comments were submitted by both parties. The Navy, in its comments to the informal bid protest conference, admits that an additional error was made and that the in-house estimate should be further increased. This adjustment to the in-house estimate would render Transcontinental's bid low.^{1/}

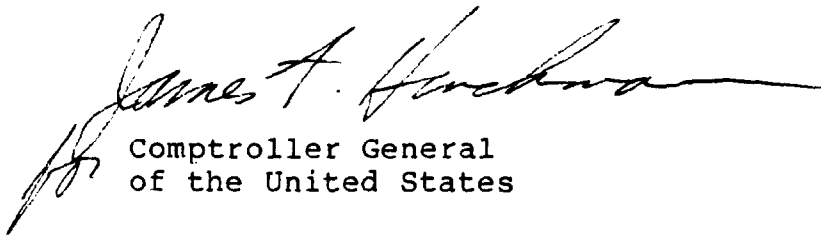
However, in these same comments, the Navy introduces new information to establish that the government estimate for vehicle maintenance supplies was overstated by several hundred thousand dollars and thus the in-house estimate remains low. The solicitation at paragraph C.7 provided that the "[c]ontractor shall perform inspections, maintenance, repair, overhaul and such related tasks for equipment listed in Attachment J-C3 except vehicles/equipment annotated with a # sign [which] are Class 'B' assigned to NSF [Naval Support Facility] Thurmont. The vehicles/equipment assigned to NSF Thurmont shall be maintained for minor repair and preventative maintenance by NSF personnel." (Emphasis added.) The Navy contends that the minor maintenance costs for 68 vehicles by NSF Thurmont were inadvertently included in the government estimate.

The Navy states that the estimate was overstated by \$340,926 for the 4-year contract period. Transcontinental questions this estimate and submits its own estimate for these repairs which is substantially lower than the Navy's proposed costs. Transcontinental asserts that it would remain low according to its calculations.

We have not been furnished the requisitions to determine whether they support the Navy's cost estimate. In any event, the protester was not given the opportunity to challenge the Navy's revised cost estimate. Accordingly, the protest is sustained on the matters properly before us.

^{1/} Since the issues discussed in this decision are dispositive of the case, we do not address the other protest allegations raised. However, with regard to Transcontinental's request to modify its bid to include a thrift savings plan which would purportedly be more advantageous to the government than the plan proposed, we do not reach the merits of such a request as it was not specifically timely appealed to the appeals board which is a prerequisite to our review of the issue. See Dynateria, Inc., B-222581.3, Jan. 8, 1987, 87-1 CPD ¶ 30.

By separate letter of today to the Secretary of the Navy, we are recommending that Transcontinental be allowed to challenge the issue of the validity of the government's new estimate for vehicle maintenance supplies under the A-76 appeals process. Under this procedure, the specific requisitions can be reviewed properly and any adjustments to the cost comparison can be made if justified. If, after the appeals process has been exhausted, Transcontinental prevails as having a lower cost than the in-house estimate, we further recommend that award be made to Transcontinental. See generally Fischer & Porter Co., B-227941, Oct. 28, 1987, 87-2 CPD ¶ 410.


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